
IN THE SENATE OF THE UNITED STATES.

MARCH 1, 1871.

Read the first time.

AN ACT

To promote the construction of the Cincinnati Southern Railway.

Whereas it is represented to this present Congress that Miles Greenwood, Richard M. Bishop, William Hooper, Philip Heidelberg, and Edward A. Ferguson, of the city of Cincinnati, in the State of Ohio, were appointed, under and by virtue of an act of the general assembly of the said State of Ohio, passed on the fourth day of May, in the year eighteen hundred and sixty-nine, a board of trustees, with authority, by the name of the Trustees of the Cincinnati Southern Railway, to borrow a fund not to exceed ten million dollars, and to issue bonds therefor in the name of the said city of Cincinnati, under the corporate seal thereof, of which said fund the said Miles Greenwood, Richard M. Bishop, William Hooper, Philip Heidelberg, and Edward A. Ferguson, and their successors, are to be trustees, with power to expend the same in procuring the right to construct and in constructing a single or double track railway, with all the usual appendages, including a line of telegraph between the said city of Cincinnati and the city of Chattanooga, in the State of Tennessee, to be called and known as the Cincinnati Southern Railway, and with power and capacity for the purpose as aforesaid, to

make contracts, appoint, employ, and pay officers and agents, and to acquire, hold, and possess all the necessary real and personal property and franchises, in the said State of Ohio, or in any other State into which the said line of railway may extend, and with other powers in said act expressed: Therefore,

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*
 3 That the said board of trustees, namely, Miles Greenwood,
 4 Richard M. Bishop, William Hooper, Philip Heidelbach, and
 5 Edward A. Ferguson, and their successors, by the name of the
 6 Trustees of the Cincinnati Southern Railway, be, and they are
 7 hereby, authorized, subject to the provisions and restrictions
 8 in the act provided to construct and maintain the said line of
 9 railway with a single or double track, with all the usual ap-
 10 pendages, including a line of telegraph and the bridges nec-
 11 essary to carry said railway across the navigable rivers in-
 12 tervening between the termini thereof, and to exercise the
 13 powers vested in them by act of the general assembly of Ohio
 14 in leasing the same.

1 SEC. 2. That before any bridge shall be commenced
 2 under this act, the said trustees shall submit to the Secretary
 3 of War a plan of the bridge and piers, with a detailed map
 4 of the river at the proposed site of the bridge, together with
 5 all other information touching such bridge and river as may
 6 be deemed requisite by the Secretary of War: *Provided,*

7 That the bridge across the Ohio River shall have an unbroken
8 or continuous span across the main low-water channel, of an
9 elevation not less than ninety feet above low-water mark,
10 nor less than forty feet above extreme high-water mark, as
11 understood at the point of location, measuring, for such eleva-
12 tion, to the bottom chord of the bridge; and all the spans, other
13 than the one over the main low-water channel, shall be at
14 least two hundred and fifty feet in length in the clear, and the
15 span covering the main low-water channel shall be of such
16 length as to leave at least four hundred feet for unobstructed
17 passage-way for navigation at all stages: *Provided further,*
18 That before the Secretary of War shall grant permission to
19 said trustees to construct a bridge across the said river Ohio,
20 he shall detail a board, to be composed of three experienced
21 officers of the Corps of Engineers, to examine the proposed
22 location of said bridge, and report what length of span and
23 other conditions they deem necessary to secure a passage-
24 way that shall not unnecessarily obstruct the navigation of
25 the said river.

1 SEC. 3. That the Secretary of War is hereby authorized
2 and directed, upon receiving said plans, maps, reports, and
3 other information, and being satisfied that a bridge can be
4 built at either of the proposed localities which will not
5 materially obstruct or injuriously modify navigation, to notify
6 in writing the said trustees that he approves the plan and

7 location of the same, and upon receiving such notification the
8 said trustees may proceed to the erection of such bridge, con-
9 forming strictly to the approved plan and location.

1 SEC. 4. That in case of any litigation arising from any
2 obstruction or alleged obstruction to navigation created by
3 the construction of any bridge under this act, the cause or
4 question arising may be tried before the district court of the
5 United States of any State in which any portion of said ob-
6 struction or bridge touches.

1 SEC. 5. That said trustees are hereby empowered to
2 purchase, lease, receive, and hold such lands or other property
3 as may be necessary for accomplishing the objects of this act,
4 and may, by their agents, engineers, contractors, or workmen,
5 immediately enter upon, take possession of, and use all such
6 lands and property as may be necessary for the construction,
7 maintenance, and operation of said railway, and the accom-
8 modations requisite and appertaining thereto ; but all lands or
9 property thus entered upon and appropriated by said trustees,
10 which are not donations, shall be purchased by said trustees
11 of the owner or owners of the same, at a price to be mutu-
12 ally agreed upon between them, and in case of a disagreement
13 as to price, and before taking exclusive possession of the track
14 of said railway and its appurtenances, the said trustees, or the
15 owner or owners of such lands or property, shall apply by
16 petition to the justice or justices of the Supreme, circuit, or

17 district court of the United States having jurisdiction in the
18 State or locality in which said lands or other property may
19 be situated, particularly describing the same; and the said
20 justice, upon receiving such application, shall cause such no-
21 tice to be given to the other party as he shall deem proper
22 and sufficient, appointing therein a time and place of hearing
23 the parties, at which time and place, upon proof that the no-
24 tice directed has been given, the said justice shall direct the
25 manner of ascertaining the true value of said lands or other
26 property, together with the damages which the owner or own-
27 ers thereof have sustained or may sustain by reason of the
28 appropriation, occupation, and use thereof by the said trustees.
29 And the said justice shall appoint not less than three nor more
30 than seven competent and disinterested commissioners, who
31 shall be freeholders in the State or district, and at least one
32 of whom shall be a resident of the county in which said
33 lands or other property may be situated, and who shall,
34 under the direction of the said justice view said prem-
35 ises or property, take such testimony as they may deem
36 proper, make appraisement, and determine the said damages,
37 and report the same, under oath and in writing, to the said
38 justice. The report shall contain a minute and accurate de-
39 scription of the lands and other property appraised, together
40 with all the evidence taken by the commissioners in the case.
41 It shall be the duty of the said justice to examine the report

42 of the said commissioners, and, upon the application of either
43 party, he shall give the party a hearing in relation thereto ;
44 and he shall, unless a jury be demanded, have power to in-
45 crease or diminish said appraisal or damages, if he shall be-
46 come satisfied upon such hearing that injustice has been done.
47 But either party may have a jury to determine the amount
48 of damages ; and in case such jury be demanded, the case
49 shall be tried at the next term of the circuit court of the
50 United States, under such rules as the court shall provide.
51 Upon proof to the said justice, to be made within sixty days
52 after his determination of payment to the owner, or of de-
53 positing to the credit of the owner, or his legal representative,
54 in such incorporated moneyed institution as the said justice
55 shall direct, the amount of said award, and the payment of all
56 expenses attending the same, including an allowance of five
57 dollars per diem to each of the aforesaid commissioners,
58 the said justice shall make an order or decree, par-
59 ticularly describing said lands or other property, and
60 reciting the appraisement of damages and the mode of
61 making it, together with such other facts as he may
62 deem pertinent; and when the said order or decree shall be
63 recorded in the clerk's office of the county, town, or city in
64 which such lands or other property may be situated, and also in
65 the office of the Secretary of the Interior, the said trustees, their
66 successors and assigns, shall be legally and equitably seized

67 and possessed of such lands and other property for the pur-
68 pose hereinbefore described. In case any married woman,
69 infant, idiot, insane person, or non-resident of the State or dis-
70 trict in which said lands or other property may be situated,
71 shall be interested in such lands or other property, the said
72 justice shall appoint some competent, disinterested person to
73 appear before said commissioners, and act for and in behalf of
74 such married woman, idiot, infant, insane person, or non-resi-
75 dent: *Provided, however,* That the said trustees shall not
76 have power to condemn the property of any railway com-
77 pany chartered by the laws of any State, except so far as the
78 same may be necessary for crossing the line of such railroad,
79 doing no unnecessary damage thereto.

1 SEC. 6. That if during the construction, or after the com-
2 pletion of said line of railway, it shall be found necessary by
3 said trustees to change the location or grade, or to substitute
4 other works or conveniences for those originally designed or
5 constructed, or to provide additional side-tracks, or other
6 appendages, for the proper management and operation of said
7 railway, the said trustees may make such changes, and pro-
8 vide such additional appendages, not departing from the
9 general route originally selected by them, and for the purpose
10 aforesaid may acquire or enter upon, take, and appropriate
11 such lands or other property as may be necessary in the mode
12 hereinbefore prescribed.

1 SEC. 7. That the gauge of the said railway shall be of
2 uniform width, or so as to carry one set of cars throughout
3 its entire length, and the entire railway shall, with its outfit,
4 fixtures, and structures, together with all its appurtenances,
5 be equal in character and workmanship to any of the first-
6 class railways of the United States.

1 SEC. 8. That said trustees shall survey and locate the
2 route of said line of railway, and actually commence the con-
3 struction thereof, within one year from the passage of this
4 act, and shall continue such construction, and complete the
5 work within five years therefrom, or within such further rea-
6 sonable period as the Secretary of the Interior may grant,
7 upon satisfactory evidence that they are progressing with due
8 diligence and in good faith. A map and profile of said rail-
9 way, and any alteration or addition herein authorized, shall
10 be deposited with the Secretary of the Interior within such
11 time as he may prescribe.

1 SEC. 9. That the respective holders of all the bonds
2 issued by said trustees under said act of the general assembly
3 of Ohio are hereby declared to be entitled to hold by way of
4 mortgage, without any conveyance, the said line of railway
5 and its appendages, and the net income thereof, and all the
6 estate, right, title, and interest of the said city of Cincinnati,
7 and of the said board of trustees therein, until the respective
8 sums mentioned in said bonds, and the interest thereon, shall

9 be fully paid, without any preference one above another by
10 reason of priority of date of any such bonds, or of the time
11 when such holder became the owner of the same, or other-
12 wise howsoever. The mortgage lien hereby given is to vest
13 as soon as rights of way or lands whereon are to be placed
14 the works and conveniences used in constructing, maintain-
15 ing, or operating said railway are acquired or taken by virtue
16 of the powers of the said trustees: *Provided*, That nothing
17 herein contained shall affect the lien of any prior owner upon
18 land sold to or appropriated by said trustees, nor to be held
19 to include the rolling-stock used in operating said road.

1 SEC. 10. That if any suit or proceeding, either in law
2 or equity, or any criminal prosecution, shall be commenced
3 in any State court against the said trustees, their successors
4 or assigns, or any person authorized or employed by them,
5 for any act done or omitted to be done in and about the
6 construction of the railway hereby authorized under and by
7 virtue of this act, and in which the validity of any franchise
8 conferred by this act is denied, or to restrain, by injunction or
9 otherwise, the construction, completion, or operation of the
10 said railway, and the defendant shall, at the time of entering
11 his appearance, or within thirty days thereafter, in such court,
13 in said action or proceeding, file a petition, stating the facts
14 and verified by affidavits, for a removal of the cause, for the
15 trial at the next circuit court of the United States to be
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16 holden in the district where such suit or prosecution is pending,
17 and offer good and sufficient security for his filing in such circuit
18 court, on the first day of its next session, copies of the pro-
19 cess and other proceedings against him in such State court,
20 and also for his appearing in such circuit court and entering
21 special bail in the cause of proceeding, (if special bail was
22 originally required therein,) it then shall be the duty of the
23 State court to accept the security, and proceed no further in
24 the cause or prosecution, and the bail that shall have been
25 originally taken in such State court shall be discharged. And
26 upon such copies being filed, as aforesaid, in such circuit court of
27 the United States, the cause or prosecution shall proceed therein
28 in the same manner as if it had been brought in such circuit
29 court, whatever may be the amount in dispute, or the damage
30 claimed, or whatever may be the citizenship of the parties, any
31 law to the contrary notwithstanding. And any attachment of
32 the goods or the estate of the defendant by original process
33 from such State court shall hold the goods and the estate so
34 attached to answer the final judgment in the same manner
35 as by the laws of such State they would have been holden
36 to answer final judgment had it been rendered in the court
37 in which the suit or prosecution was commenced; and from
38 any final judgment rendered in any such suit or prosecution
39 by such circuit courts, a writ of error shall lie to the Supreme

40 Court of the United States, whatever may be the amount of
41 such judgment, any law to the contrary notwithstanding.

1 SEC. 11. That the said line of railway, with the bridges
2 hereby authorized to be constructed, shall be deemed and
3 considered a national public highway and post road for the
4 transmission of the mails and the troops and munitions of
5 war of the United States; and no tax or transit duty shall
6 be imposed by virtue of any State authority upon the traffic
7 of said company, its freight or passengers, and no property
8 tax shall be levied on the property of said road at a higher
9 rate pro rata than is levied by the laws of said State upon
10 the property of all other roads constructed in said State under
11 the laws thereof.

1 SEC. 12. That the charge for transportation on said
2 railway shall not exceed thirty-five cents per hundred pounds
3 on heavy articles, and ten cents per cubic foot on articles of
4 measurement, for every hundred miles, and five cents a mile
5 for every passenger.

1 SEC. 13. That the lines of railroads carrying mails of
2 the United States which may be, or are now, constructed
3 under the authority of the States through which the railway
4 hereby authorized shall pass, and which may meet or intersect
5 the same and their connections, shall have the right to con-
6 nect, for the purpose of transportation, with the railway
7 hereby authorized on fair and equitable terms under the pro-

8 rata system now customary upon main lines in the United
 9 States: *Provided*, That the lines of railroad so claiming the
 10 right to connect shall reciprocate in traffic with the line
 11 hereby authorized upon the same terms and without discrimi-
 12 nation or prejudice against it; such connecting lines shall
 13 have the right to sell through tickets, check through baggage,
 14 and transport freight in such manner and upon such terms as
 15 are customary between connecting lines of railways, and
 16 through tickets, through baggage, through receipts for freight,
 17 shall be furnished by the persons or company operating the
 18 line hereby authorized over such lines of railroad as may
 19 connect with them and as the passenger and shipper or con-
 20 signor may select, and without discrimination or prejudice to
 21 any one or more of said connecting lines of railroad.

1 SEC. 14. That the persons or company operating said
 2 railway, or any part thereof, as lessees or otherwise, shall re-
 3 ceive and carry all passengers and freight coming or brought
 4 to it or them to be carried, and shall keep an agent in every
 5 county through which the said railway runs, upon whom ser-
 6 vice of process may be made.

1 SEC. 15. That the said trustees shall keep an office and
 2 an agent in the city of Covington, Kentucky, and in the city
 3 of Chattanooga, Tennessee, upon whom service of process
 4 may be made. They may sue and be sued in the courts of
 5 the United States by the name of the Trustees of the Cincin-

6 nati Southern Railway. They, and the persons or company
7 operating said railway as lessees or otherwise, shall make an
8 annual report to the Secretary of the Interior, to be in such
9 form, verified in such manner, and containing such items as
10 he may prescribe.

1 SEC. 16. That if any person shall willfully do, or cause
2 to be done, any act or acts whatever, whereby any building,
3 structure, or other work, or any engine, car, or machine, or
4 other property to said railway, shall be injured, impaired, or
5 destroyed, or stopped, the person or persons so offending shall
6 be guilty of a misdemeanor, and on conviction thereof, by any
7 court of competent jurisdiction, shall be punished by a fine
8 of not less than one thousand dollars nor more than five
9 thousand dollars, or by imprisonment not less than two years
10 nor more than five years, or both, at the discretion of the
11 court, and also forfeit any pay to the party aggrieved, double
12 the amount of damages sustained by means of such offense,
13 to be recovered by the party aggrieved, with costs of suit,
14 by any action of debt or case.

1 SEC. 17. That the following words and expressions in
2 this act shall have the several meanings hereby assigned to
3 them, unless there be something in the context repugnant to
4 such construction, that is to say: The word "lands" shall
5 include not only lands and every estate therein, but also ease-
6 ments and franchises connected therewith. The word "trus-

tees" shall mean the trustees for the time being appointed under the said act of the general assembly of the State of Ohio, and shall include the said board of trustees and their successors. The expression "line of railway and its appendages" shall extend to and include the works and conveniences of the said railway, such as offices, stations, shops, sheds, depots, car-houses, and other buildings, bridges, viaducts, tunnels, arches, piers, abutments, embankments, approaches, ways, aqueducts, culverts, sewers, drains, wharves, yards, fences, telegraph posts and wires, tracks, turn-outs and turntables, and the rights of way and lands belonging to said trustees whereon the said and other like works and conveniences used in constructing, maintaining, or operating said railway are placed. The expression "said act of the general assembly of the State of Ohio" shall mean the act of the general assembly of the State of Ohio entitled "An act relating to cities of the first class having a population exceeding one hundred and fifty thousand inhabitants," passed on the fourth day of May, in the year eighteen hundred and sixty-nine. The expression "line of railway" shall mean the line of railway between the city of Cincinnati, in the State of Ohio, and the city of Chattanooga, in the State of Tennessee.

1 SEC. 18. That this act shall be deemed and taken as a
2 public act, and as such notice shall be taken of it by all courts
3 without the necessity of pleading the same, and may be

- 4 altered, amended, or modified by the Congress of the United
5 States as the public good may require.

Passed the House of Representatives February 28, 1871.

Attest:

EDWARD McPHERSON, *Clerk.*